

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE:)	CHAPTER 7
)	
SHARON L. KNICELEY,)	CASE NO. 06-62234
)	
Debtor.)	JUDGE RUSS KENDIG
)	
)	
)	MEMORANDUM OF OPINION
)	(NOT INTENDED FOR
)	PUBLICATION)

This matter is before the Court on Debtor's Application for Waiver of the Chapter 7 Filing Fee (hereafter "application") filed on July 11, 2006. On July 13, 2006, the Court entered an order requesting Debtor file additional documentation to allow the Court to fully assess her current financial condition. Debtor complied with the order and submitted the requested documents on July 18, 2006.

This opinion is not intended for publication or citation. The availability of this opinion, in electronic or printed form, is not the result of a direct submission by the court.

Following passage of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Debtors are permitted to seek a waiver of the bankruptcy filing fee. Pursuant to 28 U.S.C. § 1930(f), a "bankruptcy court may waive the filing fee . . . if the court determines that such individual has less than 150 percent of the income official poverty line . . . applicable to a family of the size involved and is unable to pay that fee in installments." By the terms of the statute, a court's ability to waive the fee is permissive, not mandatory ("may waive"), and waiver must be premised upon a finding that a debtor meets the income and inability to pay in installments criteria.

The Court will first determine whether Debtor's income is 150 percent of the poverty level. On Schedule I, Debtor indicates she has two children, ages 12 and 20.¹ Therefore, the court will base the calculations based on a family size of three. According to the Department of Health and Human Services 2006 Poverty Level Guidelines, available at <http://aspe.hhs.gov/poverty/06/fedreg.htm> the poverty income for a family of three is \$16,600.00. At 150 percent of poverty, the poverty income is \$24,900.00 annually or \$2,075.00 per month.

¹ The court notes that Debtor does not indicate she is receiving any support for the children and Schedule J shows an alimony/support expense of \$100.00. Debtor, however, did not claim any dependents on her 2005 tax return.

Form B22A (the "means test") indicates Debtor's Annualized Current Monthly Income is \$20,976.00 which is based on a monthly gross income of \$1,748.00. The Court finds that, based on the most recent pay stubs submitted by Debtor, these figures comport with Debtor's recent pays; the average gross pay of Debtor's last three pays is \$396.51 per week. However, it appears the recent earnings are not reflective of Debtor's historical earnings. Her last paycheck, for the period ending December 2, 2006, indicates Debtor's gross wages for the year to date are \$24,874.26. Further, Debtor's adjusted gross income from her 2005 tax return is \$26,029.00. Thus, it is clear that Debtor earns more than the \$20,976.00 determined through the Form B22 calculations. In approximately eleven months this year, her earnings equal the federal poverty guideline; December's earnings will put her household earnings above 150% of poverty. Debtor has therefore failed to prove the first element of the standard for waiver.

Upon review of the documents, and upon finding that Debtor earns more than 150% of the poverty guideline for family of three, the Court hereby **DENIES** Debtor's application to waive the filing fee. Debtor shall be permitted to pay the filing fee in the installments set forth in the Order Granting Application to Pay Filing Fees in Installments.² The Debtor shall bring either the exact amount of cash or a money order, payable to Clerk, United States Bankruptcy Court, to the Clerk's Office. Failure to pay the filing fee in accordance with this order will result in dismissal of this case.

It is so ordered.

/s/ Russ Kendig

RUSS KENDIG
U.S. BANKRUPTCY JUDGE

DEC 27 2006

Service List:

Sharon L. Kniceley
427 N. Tuscarawas Ave., Lower
Dover, OH 44622

Anthony J. DeGirolamo
Courtyard Centre, Suite 625
116 Cleveland Ave., N.W.
Canton, OH 44702

² The order establishes the following payment schedule:

12/01/2006	\$75.00 (paid)
01/01/2007	\$75.00
01/15/2007	\$75.00
02/01/2007	\$74.00